IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3006 OF 2005

IN

SUIT NO.3100 OF 1985

The Municipal Corporation of Gr.Bombay. ...Plaintiff.

vs.

Kishore Morarji Bhojraj and others. ...Defendants.

Mr.P.G.Lad i/b. S.H.Ujjanwala, for Plaintiff

Mr.Ram Choksy i/b. M/s.Choksy & Co., for Defendant nos.1 to 4.

CORAM: D.K.DESHMUKH,J.

DATED: 30th MARCH,2007..

P.C.:-

1. Heard the learned Counsel appearing for both the sides. It appears from the averments in the affidavit filed in support of the notice of motion that when the suit was called, both the sides and their Advocates were not before the Court and therefore, suit came to be dismissed for default. It is true that no prayer is made in the notice of

motion for condonation of delay but there are averments made in the affidavit explaining the delay. It is true that the explanation that is given also cannot be termed as sufficient cause. But since, the suit is by the local authority and the local authority is willing to pay substantial cost to the defendants in my opinion, it will be appropriate to condone the delay and restore the suit. The delay in taking out the notice of motion is condoned. The notice of motion is granted in terms of prayer clause (a) subject to payment of Rs.5,000/- as and by way of cost to the defendants. Payment of cost is condition precedent. Cost to be paid within a period of Eight weeks.